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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK BAHREN, JOACHIM WIETZKE,
HARALD SCHOPP, JOACHIM BISCHOFF,
and DIRK LAPPE

Appeal 2008-3357
Application 09/892,706
Technology Center 2100

Decided:¹ April 17, 2009

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and
JEAN R. HOMERE, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 6, 8, 12, 14 through 18, and 23 through 25. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

Appellants' invention provides a mechanism for communicating between a network, such as a MOST network installed in a motor vehicle, and a second network, such as the Internet. Only one network unit of the MOST network within the vehicle communicates directly with the second network. A proxy computer in each of the remaining network units in the MOST network communicates with the first unit. (Spec. 17, Abstract; Claim 6).

Representative Claim

6. A network comprising:
 - a plurality of network units;
 - a Media Oriented Systems Transport (MOST) network communicably linking the plurality of network units in a network configuration; and
 - where a first network unit, comprising a wireless telephone, of the plurality of network units has installed a TCIP/IP network layer of a second network in combination with an associated application program interface, and where a proxy computer is installed in each of the plurality of network units other than the first network unit.

Prior Art and Examiner's Rejections

The Examiner relies on the following references as evidence of unpatentability:

Angwin	6,246,688	Jun. 12, 2001 (filed Jan. 29, 1999)
Appellants' admitted prior art.		

All claims on appeal, claims 6, 8, 12, 14 through 18, and 23 through 25, stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner relies upon Appellants' admitted prior art in view of Angwin.²

Claim Groupings

Based on Appellants' arguments in the principal Brief, we decide the appeal on the basis of the arguments presented as to independent claim 6 which is considered by Appellants to be representative of the subject matter of independent claims 6, 18, and 25. No arguments are presented to us as to any dependent claim on appeal.

ISSUE

Have Appellants shown that the Examiner erred in finding that the combination of Appellants' admitted prior art and Angwin teaches the subject matter of representative independent claim 6 of "where a proxy

² An outstanding rejection of certain claims on appeal under the written description portion of the first paragraph of 35 U.S.C. § 112 was withdrawn by the Examiner at page 5 of the Answer.

computer is installed in each of the plurality of network units other than the first network unit”? No other feature of claim 6 is argued before us.

FINDINGS OF FACT

1. From our understanding of the Examiner’s positions as to Appellants’ admitted prior art, it appears to us that the Examiner relies upon the subject matter represented by the revised Specification accompanying an amendment identified as page 12, line 7 through page 13, line 2. There it is noted that it was well known in the art that Media Oriented Synchronous Transfer (MOST) networks were utilized in automobiles to interconnect various types of electronic devices therein. It was also recognized that network layers of software associated with a second network may be installed in each device having a personal computer of the given network.

2. As a part of each of the network units associated with the MOST network other than the first network unit that communicates directly with the second network, revised Specification, page 15, line 13, states that “[a] well-known proxy computer 115 is installed in the remaining units.”

3. Angwin’s prior art Figure 1 shows a data processing network 40 which is comprised of a plurality of other networks. One of these other networks is identified as a wireless network 44 to which a client 10 may be directly connected by means of a gateway computer 46. Wireless clients 11, 12 are part of wireless network 42 which also communicates with gateway computer 46. Angwin’s column 4, lines 22 through 27, teaches “[a] workstation 10 may communicate with other computers or networks of computers, for example via a communications channel or modem. Workstation 11 is similarly any type of computing device, connected to a

wireless network. Specifically, cellular phone devices 12 are shown as connecting to wireless network 42 using wireless means.” Additionally, column 4, lines 30 through 36, teaches “[t]he workstation 10, 11, 12 may be associated with other computers in a local area network (LAN) or a wide area network (WAN), or the workstation 10, 11, 12 can be a client in a client/server arrangement with another computer, etc. All of these configurations, as well as the appropriate communications hardware and software, are known in the art.” Lastly, column 4, lines 40 and 41 state “[a] gateway computer 46 serves as a point of entry into each network 44.” Column 4, lines 58 through 60, state “[f]urther, the gateway 46 may be directly or indirectly coupled to one or more workstations 10.” The paragraph bridging columns 4 and 5 indicates that the workstations may communicate with the gateway by means of standard networking protocols such as TCIP/IP. The discussion beginning at column 5 indicates that the telephone 200 in figures 2A-2C serves as a gateway for the devices of the vehicle network.

4. At pages 8 and 9 of the Answer, the Examiner states:

Figure 1 of the disclosure merely illustrates using the proxy as an interface in order for communication to go through. Since in context of the specification as aforesaid, the so-called "proxy" neither is the one to manage Internet traffic, the API and the first device is the unit that manages traffic (see Spec page 13 and 15). Throughout the specification does not suggest any caching content related nor required access control to each particular unit. Beside if the access control were needed, should it be more appropriated to install this feature at the first unit, which equipped with the API. Therefore, examiner convinces that the term proxy, in context of the claim and the original specification, does not intend to be used as customary meaning of proxy, or acting as a firewall.

Since the term proxy are neither being explicitly defined by the applicant nor being use correctly in accordance to its customary meaning as explained above. Therefore, examiner applied a general meaning of the term proxy, which the closest interpretation given in the Microsoft Bookshelf Reference is "A person authorized to act for another; an agent or a substitute." or online dictionary.com is "a person authorize to act as the deputy or substitute for another, agent" or American Heritage College Dictionary 4th edition is "a person authorized to act for another, to act in place of another" in which when read in context of the claim and in combination with the following phrase "proxy computer," means a computer software or hardware the act as agent of another. Since the MOST network devices using proxy to communicate with the API, in the sense the proxy in this instance has functionality equivalent to an interface, which conventionally has been used by a device to communicate with another device. Thus, Examiner's applying the term proxy, as interface is proper.

PRINCIPLES OF LAW

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). Our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

The Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415-16 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

We must determine whether or not the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *See id.* at 406. Obviousness determination is not the result of a rigid formula, and we will consider the facts of a case and the common sense of those skilled in the art. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007). That is, the test for obviousness is rather what the combined teachings of the references would have suggested to those of ordinary skill in the art. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981); *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991).

ANALYSIS

At the outset, we note that Appellants do not directly argue to us in the paragraph bridging pages 12 and 13 of the principal Brief that Appellants' admitted prior art noted in Finding of Fact 1 would not have been properly combinable within 35 U.S.C. § 103 with the teachings in Angwin. Angwin teaches in only a general sense that a prior art network was known to the artisan for use in vehicles. Thus, the most specific prior art network identified as a MOST network in Appellants' admitted prior art to an artisan clearly would have been an obvious specific representation of the general network identified by Angwin repeatedly throughout his written description.

We agree with the Appellants' arguments presented at page 2 of the Reply Brief that representative independent claim 6 requires that the claimed first network not include a proxy computer that is stated to be included in each of the remaining plurality of network units within the MOST network.

The remaining arguments in the Reply Brief and the bulk of the arguments presented in the principal Brief appear to invite us to read into the subject matter of the term "proxy computer" a more specific or narrow type of prior art proxy computer well beyond what is identified functionally in Appellants' own Specification as filed. We will not read into representative independent claim 6 subject matter that was not recited in it and not taught respectively in the original Specification as filed. With respect to these considerations, we agree with the basic thrust of the Examiner's positions (though somewhat awkwardly worded) in the statement of the rejection and in the responsive arguments portion of the Answer that we reproduced in Finding of Fact 4, that only a general type of interfacing device appears to be

contemplated by Appellants' disclosure. There is no disclosed functionality associated with the term "proxy computer" (Finding of Fact 2) and no function is recited in representative independent claim 6 on appeal associated with it either.

Since we agree with the Examiner's arguments reproduced in Finding of Fact 4 that only a general interfacing approach is contemplated by the mere recitation of "proxy computer" in representative independent claim 6, the rejection is sustained because the Examiner's reliance upon Angwin is further evidence of the obviousness of the claimed feature. Angwin's prior art Figure 1 shows at least a plurality of connected devices 10, 11, and 12 that are directly/wirelessly connected to a gateway 46 where the teachings we identified with respect to Angwin in Finding of Fact 3 indicate that it was clearly known in the art that such workstations comprise means in the form of communications channels, modems or client-server relationships that each have an ability to directly interface with the common gateway computer 46 which is analogous to the claimed first network unit which permits the devices 10, 11, and 12 to communicate respectively to other networks, such as wireless networks 42 and 44 illustrated in prior art Figure 1 of Angwin.

CONCLUSION OF LAW

Appellants have not shown that the Examiner erred in finding that the combination of Appellants' admitted prior art and Angwin teaches the claimed feature of representative independent claim 6 on appeal of a proxy computer installed in each of the plurality of network units other than the first network unit.

DECISION

The Examiner's rejection of claims 6, 8, 12, 14 through 18, and 23 through 25 under 35 U.S.C. § 103 is affirmed. All claims on appeal are unpatentable.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc

O'SHEA GETZ P.C.
1500 MAIN ST. SUITE 912
SPRINGFIELD, MA 01115